

Mr. Sullivan
Japan file

September 18, 1958.

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TO : L - Mr. Becker
FROM : L/E - Stanley D. Metzger
SUBJECT: Supplemental Memorandum regarding proposed reply to
Ford Motor Company concerning FCN Treaty with Japan.

In connection with the inquiry of the Ford Motor Company concerning the Treaty of Friendship, Commerce and Navigation with Japan, you raise the question whether it is appropriate for the Department to interpret treaties to which the US is a party to private persons. This is a question regarding which you indicated you may wish to seek the views of the entire staff.

Treaty provisions have frequently been interpreted by the Department for many years for the benefit of private persons on their request. In certain situations it is not desirable or practicable to render an opinion regarding treaty provisions; for example, in cases which are in litigation. In my opinion, it should be, as I understand it has been, a matter of judgment depending on the circumstances; there should not be a hard and fast rule. For example, there are instances where the views of the Department as to its interpretation of a particular treaty provision may be most important to the inquirer. This is particularly true in cases involving commercial treaties since these treaties serve as a charter of the rights of an American in a foreign country; they assure him fundamental personal liberties that he enjoys in the United States; they pledge constant protection

DEPARTMENT OF STATE A/CDC/MR	
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protection and security for his person and property; they allow him to engage in the normal run of business pursuits; when he goes to a treaty country he receives these things as a matter of right duly agreed to by his Government and that of the treaty country. Occasions arise when a person is not certain of the rights which the treaty has created for him. He or his attorney therefore seeks the advice of the only source that is available to him. In such cases, it would be doing the person a service to provide him with appropriate interpretations of his treaty rights where it is possible and desirable to do so. In some cases the judgment may be different, depending on the facts, the degree of speculativeness in the inquiry, etc.

Regarding the letter to the Ford Motor Company, it appears to be desirable under all circumstances to provide the company with the information contained in the draft letter. The Japanese are fully aware of the provisions contained in the agreed minutes and in all likelihood would confront the company with the interpretation which both Governments have agreed to in the course of the negotiations of the treaty. It would be unfortunate if the Ford Motor Company were to learn of the meaning which both parties have ascribed to the treaty from a source other than its own Government.

Therefore, apart from the question of interpretation generally, I recommend that you agree to giving this treaty information to the Ford Motor Company so that they will be able to assess their position properly in dealing with the Japanese Government regarding their property rights.

LsL/E:JJCaynakir